In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 1150 of 2005
Date of Decision: 21.11.2006

Dharam Pal …Petitioner

Versus

The Superintending Engineer, Operation Circle UNBVNL Karnal and another …Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Vikas Chaudhary, Advocate,for the petitioner
Mr. Ravinder Hooda, Advocate the respondents

M.M. KUMAR, J.

Petitioner was initially appointed on 11.6.1968 as T.Mate on work charged basis with the Electricity Board . He was appointed/ promoted as Assistant Line man on adhoc basis on 19.7.1975. His services were regularised as Assistant Line Man on regular basis on 25.11.1975. The petitioner was promoted to the post of Lineman and he retired as such on 31.12.2001 on attaining the age of superannuation. It is asserted that there was no break in his service since 11.6.1968 till regularisation of his service. On 25.1.2002, the pension of the petitioner was fixed. It is claimed that the service rendered by the petitioner on work charged and adhoc basis has not been taken into consideration as qualifying service while calculating pension and gratuity and only regular service has been reckoned with effect from 25.11.1975. On 28.5.2002, the petitioner through his counsel served a legal notice on the respondents for taking in account the service rendered by him as work charged and on adhoc basis for the purposes of calculating pension, gratuity and other retiral benefits. But no action was taken on the legal notice. The petitioner thereafter preferred Civil Writ Petition no. 15485 of 2002 which was disposed of by this Court on 26.9.2002 with a direction to the respondents to decide the legal notice dated 28.5.2002 (Annexure P.2) within

a period of four months by passing a speaking order. The respondents while rejecting the legal notice has passed the impugned order dated 7.2.2003 (Annexure P.3) which is subject matter of challenge in the instant petition.

The prayer made by the petitioners has been opposed by the respondents by taking two objections. Firstly, it has been submitted that the petitioner was required to submit an option within a period of three months from the date of his regularation or from the date of issuance of circular dated 6.8.1993. Secondly, it has been asserted that the benefit of employer's contribution alongwith interest has not been deposited by the petitioner which was required to be done after exercising option within a period of three months.

We have heard the learned counsel for the parties at some length and find that the case of the petitioner is squarely covered by the judgment of Full Bench of this Court in the case of Kesar Chand v. State of Punjab, 1988 (2) PLR 223. The principle of law laid down by their Lordships' of the Full Bench is that the work charge service rendered by an employee followed by regularisation is entitled to be considered as a qualifying service for the purposes of pension. Even otherwise, Rule 3.17A has now been incorporated in the Punjab Civil Service Rules, Volume II, Part-I (as applicable to Haryana) in pursuance to the judgment of the Full Bench which envisages that all service interrupted or continuous followed by confirmation has to be treated as qualifying service and the period of breaks is to be omitted while working out aggregate service. Therefore, we are of the view that the claim made by the petitioner for reckoning the ad hoc service of the petitioner as qualifying service for pension is meritorious. The view of the Full Bench is discernible from the following para:

> **"Once the services of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public**

servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employees have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

The aforementioned celebrated authority in Kesar Chand's case (supra) has been followed and applied in the cases of Hazura Singh v. State of Punjab, 2004 (1) SCT 695; Mangat Ram v. Haryana Vidyut Prasaran Nigam Ltd., 2005 (4) SCT 302 and our judgment in the cases of Raj Kumar Sharma v. State of Haryana (C.W.P. No. 14774 of 2004, decided on 18.4.2006) and Mulakh Raj and another v. Dakshin HBVNL and another (CWP No.1281 of 2006 decided on 20.11.2006).

With regard to submission of option within a period of three months from the date of regularisation or from the date of issuance of

circular dated 6.8. 1993, nothing has been produced before us, which may show that any acknowledgment of the circular dated 6,8.1993 was obtained from any of the employees. Under Clause 4 of the circular there is a specific requirement that these instructions were to be got noted from all the employees and they should have acknowledged the receipt of the letter. It is evident that the afore-mentioned Clause itself has been violated as the circular has not been got noted from the petitioner. Even otherwise two Division Benches of this Court have taken the view that in the absence of acknowledgment of the circular by an employee, the plea taken by the respondents cannot be countenanced. In that regard reliance may be placed on the judgements of this Court in the cases of Dilwar Singh v. Haryana Power Generation Corporation Limited, 2006(3) SCT 412 and Ram Kumar v. Uttar Haryana Bijli Vitran Nigam Limited 2006(3) SCT 628. With regard to depositing of provident fund paid to the petitioner to the extent of employer's contribution, two Division Benches have taken the view that the afore-mentioned amount which was required to be deposited with the respondents could be adjusted from the amount which the petitioner may be found entitled to as a result of re-calculation by adding the work charged period by treating the same as qualifying service. In that regard reliance may further be placed on two Division Bench judgements in the case of Harjinder Singh v. State of Punjab 2003(4) SCT 1 and Kasturi Lal Khurana v. State of Punjab 2003(4) SCT 462.

Thus, on principle, precedents as well as the rules, the claim of the petitioner deserves to be accepted. Accordingly, we allow the writ petition. The petitioner is held entitled to computation of the work charged service as qualifying service. The employer's contribution in the provident fund drawn by the petitioner shall be adjusted and set off from the arrears which may become payable after the afore-mentioned calculation and computation. The respondents shall undertake the exercise of computation of

arrears and complete the same within a period of two months from the date a certified copy of this order is supplied to them. The petitioner shall also be entitled to interest on the arrears after setting off employer's contribution from provident fund @ 8 percent per annum from the date the arrears were payable till the date of payment. However, the arrears resulting from re-calculation of pay/pension after adding the aforementioned period of ad hoc service shall be confined only to three years two months preceding the date of filing of the writ petition, which is 19.1.2005.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

21.11.2006
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